

D.P.U. 94-112

Petition of Massachusetts Electric Company, pursuant to G.L. c. 164 §§ 69H, 69I, 76, 94, 94B and 94G, and the Department's Regional Integrated Resource Plan procedures, for review of the process by which additional energy resources are planned, solicited and procured by Massachusetts Electric Company.

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APPEARANCES: Thomas G. Robinson, Esq.  
Amy Rabinowitz, Esq.  
25 Research Drive  
Westborough, MA 01582-0005  
FOR: MASSACHUSETTS ELECTRIC COMPANY  
Petitioner

Attorney General L. Scott Harshbarger  
By: William M. McAvoy  
Assistant Attorney General  
131 Tremont Street  
Boston, MA 02111  
Intervenor

Ronald B. Wheatley, Esq.  
Settlement Intervention Staff  
Department of Public Utilities  
100 Cambridge Street  
Boston, MA 02202  
Intervenor

Representative Daniel J. Valianti  
House of Representatives  
State House, Room 540  
Boston, MA 02133-1053

Intervenor

Robert F. Sydney, General Counsel  
Massachusetts Executive Office of Economic Affairs  
100 Cambridge Street, Suite 1500  
Boston, MA 02202

FOR: MASSACHUSETTS DIVISION OF  
ENERGY RESOURCES

Intervenor

Catherine J. Keuthen, Esq.  
800 Boylston Street  
Boston, MA 02199

FOR: BOSTON EDISON COMPANY

Intervenor

Andrew J. Newman, Esq.  
Rubin and Rudman  
50 Rowes Wharf  
Boston, MA 02110

FOR: THE ENERGY CONSORTIUM

Intervenor

Alan Wilson, Deputy Director  
Armond Cohen, Senior Attorney  
Elizabeth R. Thagard, Staff Attorney  
62 Summer Street  
Boston, MA 02110-1008

FOR: CONSERVATION LAW  
FOUNDATION, INC.

Intervenor

Paul W. Gromer, Esq.  
60 Thoreau Street, Suite 234  
Concord, MA 01742-9116

FOR: MASSACHUSETTS ENERGY  
EFFICIENCY COUNCIL, INC.

Intervenor

David S. Rosenzweig, Esq.  
Gregory K. Lawrence, Esq.  
Keohane & Keegan  
21 Custom House Street  
Boston, MA 02110  
FOR: COALITION OF NON-UTILITY  
GENERATORS, INC.  
Intervenor

Stephen Klionsky, Esq.  
260 Franklin Street, Suite 2100  
Boston, MA 02110-3179  
FOR: WESTERN MASSACHUSETTS  
ELECTRIC CO.  
Intervenor

Edward L. Selgrade, Esq.  
1050 Waltham Street  
Lexington, MA 02173  
FOR: MILFORD POWER LIMITED  
PARTNERSHIP  
Intervenor

Sheldon B. Kovitz, President  
Point of Pines Beach Association, Inc.  
53 Delano Avenue  
Revere, MA 02151  
Intervenor

## ORDER ON OFFER OF SETTLEMENT

### I. INTRODUCTION

On June 1, 1994, pursuant to the regional integrated resource procedures adopted in Regional IRP Procedures, D.P.U. 93-138/157-A (1994), Massachusetts Electric Company ("MECo") and New England Power Company ("NEPCo") and their affiliates within the New England Electric System ("NEES") (collectively "Companies") filed their regional integrated resource plan ("IRP") with the Department of Public Utilities ("Department").<sup>1,2</sup> The petition was docketed as D.P.U. 94-112.<sup>3</sup>

Pursuant to notice duly issued, a public hearing was held on July 6, 1994 at the Department's offices in Boston.<sup>4</sup> The Attorney General of the Commonwealth ("Attorney General") intervened pursuant to G.L. c. 12, § 11E. In addition, pursuant to the IRP Procedures,

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<sup>1</sup> Massachusetts Electric Company/New England Power Company, D.P.U. 93-138 (1993) concerned, inter alia, an application of Massachusetts Electric Company ("MECo") and New England Power Company ("NEPCo") requesting that the Department: (1) approve the Memorandum of Understanding ("MOU") setting forth a plan for the coordinated regional review of the resource planning and procurement process of New England Electric System and its subsidiaries; and (2) exempt the Companies from the integrated resource management ("IRM") regulations. The MOU was approved by the Department in D.P.U. 93-138 and Regional IRP Procedures ("IRP Procedures") were put in place pursuant to D.P.U. 93-138/157A.

<sup>2</sup> NEPCo provides "all-requirements" electric service at wholesale to its affiliates, MECo, Narragansett Electric Company, and Granite State Electric Company operating in Massachusetts, Rhode Island, and New Hampshire, respectively.

<sup>3</sup> On June 1, 1994, Granite State Electric Company and Narragansett Electric Company also filed a regional IRP for the years 1994 to 2008 with the regulatory commissions in New Hampshire and Rhode Island.

<sup>4</sup> The IRP Procedures state that the Department may hold adjudicatory hearings and technical sessions as the public interest requires, beginning approximately three months after filing of the IRP, to allow time for settlement negotiations to take place (IRP Procedures at 9-10).

the Department appointed a settlement intervention staff ("SIS") as a party. Representative Daniel J. Valianti, Coalition of Non-Utility Generators, Inc. ("CONUG"), Massachusetts Division of Energy Resources ("DOER"), The Energy Consortium ("Energy Consortium"), Conservation Law Foundation ("CLF"), Massachusetts Energy Efficiency Council, Inc. ("MEEC"), Boston Edison Company ("BEC"), Western Massachusetts Electric Company ("WMEC"), Milford Power Limited Partnership ("Milford Power") and Point of Pines Beach Association, Inc. ("Point of Pines") were granted full intervenor status.<sup>5</sup>

On September 1, 1994, an Offer of Settlement and a Joint Motion for Approval of Offer of Settlement and Suspension of Procedural Schedule ("September 1 Settlement") was filed by the Attorney General, the SIS, DOER, Energy Consortium, CLF, MEEC, Point of Pines and the Companies. On September 9, 1994, CONUG filed comments in opposition to the September 1 Settlement.<sup>6</sup> On September 20, 1994, an Amended Offer of Settlement ("Settlement"), and a Joint Motion for Approval of Amended Offer of Settlement and Suspension of Procedural Schedule ("Joint Motion") was filed. The Settlement was jointly sponsored by the Companies, CONUG, DOER, the Attorney General, CLF, Energy Consortium, MEEC, Point of Pines, and

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<sup>5</sup> On August 24, 1994, J. Makowski Associates, Inc. ("Makowski") submitted a late petition to intervene. The Hearing Officers' Ruling, which denied Makowski's intervention in the settlement phase of this proceeding, was affirmed by the Department's Order of October 31, 1994.

<sup>6</sup> CONUG argued, inter alia, that further review and consideration of the Companies' IRP filing, especially its demand forecast, would be necessary before the Department could make findings that the demand forecast is reviewable, appropriate, and reliable (CONUG Comments at 9). Further, CONUG stated that additional information relating to likely contingencies affecting resource need must be analyzed before any conclusions can be reached regarding the adequacy of the supply plan in the short or long run, and whether the resource plan would be "least cost" with the least environmental impact (id.).

the SIS ("Parties") and supersedes in its entirety the September 1 Settlement.<sup>7</sup> The Parties move that the Department approve the Settlement on or before November 1, 1994 (Joint Motion at 1).

## II. THE PROPOSED SETTLEMENT

The Settlement states that it resolves all issues among the Parties relating to MECo's long-range forecast submitted pursuant to G.L. c. 164, § 69I and the IRP Procedures (Settlement at 1). The Parties stipulate that the Settlement, all attachments to the Settlement, and the Companies' IRP filing are incorporated by reference (id. at 2).<sup>8</sup>

Under the terms of the Settlement, the Parties agree that the Companies' long range forecast meets the statutory and regulatory requirements necessary to construct transmission and substation facilities (id.).<sup>9</sup> The Settlement also states that the Companies shall not be precluded from issuing a supply-side request for proposals; however, any contract for a significant new supply side commitment shall be conditioned on the Department's approval (id. at 2, 3). Further, the Settlement includes a contract that would preapprove certain expenditures in MECo's demand-side management ("DSM") programs (id. at 3, Preapproved Contract and Exh. 2). The projected spending levels for 1995 DSM programs under the terms of the Settlement would be

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<sup>7</sup> BECo, Milford Power, WMECo and Representative Valianti have taken no position on the Settlement (Joint Motion at 1).

<sup>8</sup> In this Order, the Department moves into evidence (1) the IRP filing submitted by the Companies to the Department on June 1, 1994, including all attachments, exhibits, and subsequent amendments, updates, revisions, and supplemental filings that have been filed as of the date of this Order, and (2) the Settlement and all attachments.

<sup>9</sup> The Settlement provides that, each time MECo proposes to construct a facility, as defined by G.L. c. 164, § 69G, MECo would file with the Department, for review and approval, a supplement to the long-range forecast presented in the IRP filing (id.).

lower than those preapproved in MECo, D.P.U. 92-217-A (1993) (Settlement at 3, Exh. 2, at 2).<sup>10</sup>

The Settlement establishes an energy initiative pilot project in which ten to twelve commercial and industrial customers would have the opportunity to analyze, schedule, and finance the installation of energy conservation measures under flexible procedures (Settlement at 3, Exh. 6).<sup>11</sup> This portion of the Settlement includes an Alternative Finance Project, by which a third party lending/leasing institution would provide funds to cover the customer co-payment portion of the cost of any efficiency project under the pilot project or, in the alternative, MECo would provide funds directly to a participating customer in an amount sufficient to cover the rebate as well as the customer co-payment (Settlement at 3-4).<sup>12</sup> The Settlement states that the Parties agree that approval of the Settlement would constitute approval of the financing arrangements for the pilot project, as may be required under G.L. c. 164, § 17A (id. at 4). Further, the Settlement provides that the costs of implementing the program shall be recoverable through conservation charges to customers (id.).

The Settlement states that, within six months of approval of the Settlement, MECo would

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<sup>10</sup> The Parties represent that all signatories to the settlement in D.P.U. 92-217-A, which would be superseded by this Settlement, have approved the proposed modifications to the D.P.U. 92-217-A settlement (IR-DPU-1-2).

<sup>11</sup> The Settlement states that the purpose of the project is to determine (1) whether streamlined procedures improve customer participation in, and satisfaction with, MECo's DSM programs, and (2) whether such procedures reduce administrative costs (Settlement Exh. 6 at 1 and Preapproved Contract at 6, 7).

<sup>12</sup> Participating customers would be obligated to repay MECo, over a two-year period, the amount that represents the co-payment portion (Settlement at 4).

submit to the other parties a proposal for performance-based cost recovery for implementation of DSM programs during 1996 (id. at 5; see also Att. 1). If there is agreement, MECo would then file the proposal with the Department (Settlement at 5). If there is disagreement with MECo's proposal, MECo would continue to implement its current cost recovery mechanism in 1996 (id.).

In the Settlement, MECo agrees to study distributed generation and/or targeted DSM as ways to improve electrical service reliability and quality, and to reduce transmission and distribution costs (id.). Depending upon the results of this study, MECo may develop a recommendation for a company-wide implementation of distributed generation and targeted DSM by January 1, 1996 (id.). The Settlement states that if regulatory proceedings in New Hampshire or Rhode Island concerning the IRP filing have an outcome that is inconsistent with the terms of the Settlement, the Settlement may be reopened in accordance with the procedures in the MOU (id. at 6).

The Settlement also provides that, on or before June 1, 1995, MECo shall file an update to its IRP filing, including a new load forecast, an updated resource inventory, and an updated resource plan which would include a deterministic and probabilistic analysis of resource need (id. at 6). The Settlement states that, within thirty days of the filing, an issue may be reopened based on significant changes that have occurred since the IRP was filed with the Department (id. at 6, 7). If there is no agreement on a resolution within sixty days of any notice of intention to reopen the Settlement, then a petition may be filed with the Department for a resolution of the issue (id.).

In addition, the Settlement provides that, other than as expressly stated, the Settlement



(1) establishes no principles and shall not be deemed to foreclose any party from making any contention in any future proceeding or investigation, and (2) shall not in any respect constitute a determination by the Department of the merits of any issue in this or any subsequent proceeding (id. at 7). The Settlement also provides that the content of negotiations shall be privileged and all offers of settlement shall be without prejudice to the position of any party or participant presenting such offer (id.). Should the Department not approve the Settlement in its entirety, the Settlement provides that it shall be deemed withdrawn and not constitute a part of the record in any proceeding or used for any purpose (id.).

### III. ANALYSIS AND FINDINGS

In assessing the reasonableness of an offer of settlement, the Department must review the entire record as presented in a company's filing and other record evidence to ensure that the settlement is consistent with Department precedent and public policy. See Western Massachusetts Electric Company, D.P.U. 94-12, at 4 (1994); Fitchburg Gas and Electric Company, D.P.U. 92-181, at 12 (1993); Western Massachusetts Electric Company, D.P.U. 92-13, at 7 (1992); Barnstable Water Company, D.P.U. 91-189, at 4 (1992); Fall River Gas Company, D.P.U. 91-61, at 3 (1991); Cambridge Electric Light Company, D.P.U. 89-109, at 5 (1989); Southbridge Water Supply Company, D.P.U. 89-24 (1989).

The Settlement in this proceeding represents agreement among a broad range of interests. It is appropriate to accept a proposed settlement agreement if the intended purpose of the IRP Procedures -- to implement procedures by which additional resources are planned, solicited, and procured to meet an electric company's obligation to provide reliable electrical service to

ratepayers at the lowest total cost to society -- would not be advanced by a continued review of the current filing (IRP Procedures, at 1). The Department notes that the interests of ratepayers are served by an IRP process that is flexible in the means employed to establish the need for and the cost of additional resources.

The Department finds that the Settlement is reasonably consistent with the objective of the IRP Procedures, and thus that continuing to review the Companies' IRP filing at this time would be unlikely to yield any clear benefits to ratepayers. Therefore, the Department finds that the interest of ratepayers would best be advanced through acceptance of the Settlement. Accordingly, the Department approves the proposed Settlement.

Our acceptance of this Settlement does not constitute a determination or finding on the merits of any particular aspect of the Companies' IRP filing and should not be interpreted as establishing precedent for further IRP filings.

IV. ORDER

Accordingly, after due notice and consideration, it is

ORDERED: That the Joint Motion for Approval of Amended Offer of Settlement and Suspension of Procedural Schedule, filed with the Department on September 20, 1994, by Massachusetts Electric Company, the Attorney General, Commonwealth of Massachusetts Division of Energy Resources, Coalition of Non-Utility Generators, Conservation Law Foundation, Massachusetts Energy Efficiency Council, Inc., Point of Pines Beach Association, Inc., Settlement Intervention Staff, and The Energy Consortium, be and hereby is approved.

By Order of the Department,

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Kenneth Gordon, Chairman

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Mary Clark Webster, Commissioner

Appeal as to matters of law from any final decision, order or ruling of the Commission may be taken to the Supreme Judicial Court by an aggrieved party in interest by the filing of a written petition praying that the Order of the Commission be modified or set aside in whole or in part.

Such petition for appeal shall be filed with the Secretary of the Commission within twenty days after the date of service of the decision, order or ruling of the Commission, or within such further time as the Commission may allow upon request filed prior to the expiration of twenty days after the date of service of said decision, order or ruling. Within ten days after such petition has been filed, the appealing party shall enter the appeal in the Supreme Judicial Court sitting in Suffolk County by filing a copy thereof with the Clerk of said Court. (Sec. 5, Chapter 25, G.L. Ter. Ed., as most recently amended by Chapter 485 of the Acts of 1971).